

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

EDGAR PERRY,

No. C 13-02369 LB

Plaintiff,

v.

**ORDER ALLOWING PLAINTIFF  
UNTIL JUNE 9, 2014 TO FILE A  
SECOND AMENDED COMPLAINT**

CASHCALL, INC., et al.,

[Re: ECF Nos. 86, 91]

Defendants.

\_\_\_\_\_  
Plaintiff Edgar Perry, who is proceeding *pro se*, sued four Defendants: CashCall, Inc.

("CashCall"); First Bank of California ("First Bank"); the Portuguese Fraternal Society of America ("PFSA"); and the State of California. First Amended Complaint ("FAC"), ECF No. 18.<sup>1</sup>

Defendants moved to dismiss Mr. Perry's First Amended Complaint. *See* CashCall's Motion, ECF No. 25; First Bank's Motion, ECF No. 32; PFSA's Motion, ECF No. 37; State of California's Motion, ECF No. 70.

On March 17, 2014, the court granted Defendants' motions, dismissing with prejudice Mr. Perry's claims against the State of California, First Bank, and PFSA and his TILA claim against CashCall, and dismissing without prejudice his breach of contract claim against CashCall. Amended

\_\_\_\_\_  
<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 3/17/2014 Order, ECF No. 86. The court granted Mr. Perry leave to file a Second Amended  
2 Complaint by April 7, 2014 to re-allege his breach of contract claim against CashCall. *Id.* On  
3 March 28, 2014, Mr. Perry appealed the court's order to the United States Court of Appeals for the  
4 Ninth Circuit. Notice of Appeal, ECF No. 87. But on May 21, 2014, the Ninth Circuit panel  
5 dismissed his appeal for lack of jurisdiction because the order he challenged (the court's Amended  
6 3/17/2014 Order granting Defendants' motions to dismiss) is not final or appealable. Order of  
7 USCA, ECF No. 91. This is because an order is not appealable unless it disposes of all claims as to  
8 all parties or judgment is entered in compliance with Rule 54, *see* Fed. R. Civ. P. 54(b); *Chacon v.*  
9 *Babcock*, 640 F.2d 221, 222 (9th Cir. 1981), and the court's Amended 3/17/2014 Order dismissed  
10 Mr. Perry's breach of contract claim against CashCall without prejudice and allowed him to file a  
11 Second Amended Complaint to re-allege this claim, *see WMX Techs., Inc. v. Miller*, 104 F.3d 1133,  
12 1136 (9th Cir. 1997) (en banc) (dismissal of complaint with leave to amend is not appealable).

13 In light of Mr. Perry's appeal and the Ninth Circuit's order, and to clarify the required next steps,  
14 the court will give Mr. Perry until **June 9, 2014** to file a Second Amended Complaint to re-allege his  
15 breach of contract claim against CashCall. Should he fail to file a Second Amended Complaint, the  
16 court may dismiss his action for failing to prosecute it.

17 **IT IS SO ORDERED.**

18 Dated: May 23, 2014



19 LAUREL BEELER  
20 United States Magistrate Judge  
21  
22  
23  
24  
25  
26  
27  
28